

Application Number 09/927,920
Responsive to Office Action mailed June 4, 2007

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REMARKS

This amendment is responsive to the Office Action dated June 4, 2007. Applicant has not amended the claims. Claims 1, 4-15, 52, 54-60, 68-78, 81-83 are pending.

Claim Rejection Under 35 U.S.C. § 103

In the Office Action, the Examiner rejected claims 1, 4, 7-15, 52, 54-56, 58-60, 68-78, 81-82 under 35 U.S.C. 103(a) as being unpatentable over Jorgenson et al. (U.S. Publication Number 2002/0095232) in view of Kallestad (U.S. Publication Number 2006/0108434). The Examiner rejected claims 5-6, 57 and 83 under 35 U.S.C. 103(a) as being unpatentable over the combination of Jorgenson and Kallestad in view of Shortridge et al. (U.S. Publication Number 2001/0011437).

Applicant submits that the rejection is improper in that Kallestad is not prior art against the claims of the present application. Specifically, Kallestad was filed on December 16, 2005 and published on May 25, 2006. Kallestad claims priority to U.S. patent application Ser. No. 10/217,312 filed on Aug. 8, 2002, which claims the benefit to U.S. Provisional Application No. 60/311,752 filed Aug. 10, 2001. Assuming that all of the subject matter on which the Examiner relies in forming the rejection is in fact described in U.S. Provisional Application No. 60/311,752, then Kallestad has an earliest possible priority date of August 10, 2001.

Applicant's application was filed on August 10, 2001, the same day as the earliest possible effective priority date of Kallestad. Therefore, Kallestad fails to qualify as prior art under 35 U.S.C. § 102. As a result, Kallestad cannot be used to establish a prima facie case of obviousness under 35 U.S.C. § 103(a). That is, a reference must qualify as prior art under 35 U.S.C. § 102 in order to be used as a basis for a rejection under 35 U.S.C. § 103. *See* MPEP 2144.04(II)(A)(1).

For at least these reasons, the references fail to establish a prima facie case for non-patentability of Applicant's claims under 35 U.S.C. 103(a). Withdrawal of this rejection is requested.

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CONCLUSION

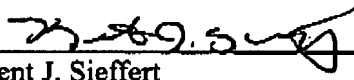
All claims in this application are in condition for allowance. Applicant respectfully requests reconsideration and prompt allowance of all pending claims. Please charge any additional fees or credit any overpayment to deposit account number 50-1778. The Examiner is invited to telephone the below-signed attorney to discuss this application.

Date:

By:

September 4, 2007

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